HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 397 of 2006 (M/S)

M/S Hotel Everest

Vs.

Union of India and others

Approved for reporting.

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Not approved for reporting
Date of decision 19.04.2006.

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 397 of 2006 (MS)

M/S Hotel Everest, the Mall Nainital through partner Sri Rakesh Lal Sah & Ravi Lal Sah sons of Late Sri Harish Lal Sah
..... Petitioner

Versus

1. Union of India through Secretary Department of Telecommunication, New Delhi
2. The Telecommunication District Engineer, Nainital
3. Sub Divisional Officer, Telecommunication, Nainital
4. Civil Judge, (J.D.) Nainital ..... Respondents

Sri P.C. Bisht, Advocate for the petitioner
A.S.G. for the respondents.

Dated: 19.4.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition the petitioner has prayed for quashing of the orders dated 15.9.2005, 8.3.20006, 23.5.2001 and 21.2.2004 passed by the Civil Judge (J.D.) by which the restoration application has been rejected.

Briefly stated a suit was filed by the plaintiff petitioner praying for a decree of mandatory injunction in favour of the plaintiff against the defendants directing them to restore the telephone numbers 35453, 36648, 33433, 36649, 36650 and 36651. The trial Court dismissed the suit ex parte on 23.5.2001. The petitioner moved a restoration application which was also dismissed on 15.9.2005. Again an application was moved on 7.10.2005 which was also dismissed on 8.3.2006.

It is well settled law that the dispute should be decided after giving ample opportunities to the parties to contest the case.

In ***N. Balakrishan Vs. M.Krishnamurthy, 1998 S.C.F.B. and Rent Cases pages 427,*** It has been held that law of limitation is founded in public policy on *'the maxim of interest reipublicae up sit finis litium'* i.e. fall the general welfare, it has been held as under: -

> *"The primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause".*
>
> *"Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the Courts. So a life spen must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is*

for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time".

"It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put-forth as part of a dilatory strategy the Court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the Court should lean against acceptance of the explanation".

Relying upon the cases of ***R.V. Camborne Justices All England Law Reports (2) 850,*** it has been held in ***International Airports Authority of India Vs. K.D. Bali (1998) 2 SCC 360*** as under:-

"While indorsing and fully maintaining the integrity of the principle 'justice should not only be done, but should manifestly be seen to be done', it is important to remember that the principle should not be done than it should in fact be done."

Law Lexicon defines 'justice' as under:-

"Justitia est constans et perpetua voluntas just suum cuique tribuendi: justice is the constant and perpetual disposition or will of giving to every man his right"

In all the aforesaid cases, the Apex Court has observed that the hearing on the lis being mandatory, one should not be deprived of hearing the matter on merits.

In view of the above, writ petition is allowed. Impugned orders dated 15.9.2005, 8.3.2006, 23.5.2001 and 21.2.2004 are quashed. The trial Court is directed to restore the suit in its original number and thereafter decide it in accordance with law.

Accordingly, writ petition is allowed. No order as to costs.

dated: 19/4/2006 **Rajesh Tandon, J.**
*Dhyani